

**§ 8.10 Predetermined penalties.**

An exchange may adopt rules which set specific maximum penalties for particular violations. If the rules of an exchange establish predetermined penalties, the disciplinary committee shall have discretion in each case whether to employ the predetermined penalty. If the predetermined penalty is employed, it shall be stated in the notice of charges. In such case, after a hearing on a denied charge where a respondent is found to have committed the violation charged, the disciplinary committee shall impose the predetermined penalty or an appropriate lesser penalty.

**§ 8.11 Notice of charges.**

The notice of charges shall:

- (a) State the acts, practices, or conduct in which the person is alleged to have engaged;
- (b) State the rule alleged to have been violated (or about to be violated);
- (c) State the predetermined penalty, if any;
- (d) Prescribe the period within which a hearing on the charges may be requested;
- (e) Advise the person charged that:
  - (1) He is entitled, upon request, to a hearing on the charges;
  - (2) If the rules of the exchange so provide, failure to request a hearing within the period prescribed in the notice, except for good cause, shall be deemed a waiver of the right to a hearing; and
  - (3) If the rules of the exchange so provide, failure in an answer to deny expressly a charge shall be deemed to be an admission of such charge.

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[43 FR 41950, Sept. 19, 1978, as amended at 46 FR 63036, Dec. 30, 1981]

**§ 8.12 Right to representation.**

Upon being served with a notice of charges the respondent shall have the right to be represented by legal counsel or any other representative of his choosing in all succeeding stages of the disciplinary proceeding.

**§ 8.13 Answer to charges.**

The respondent shall be given a reasonable period of time to file an answer to the charges. The rules of an exchange may provide that:

- (a) The answer must be in writing and include a statement that the respondent admits, denies or does not have and is unable to obtain sufficient information to admit or deny each allegation. A statement of a lack of sufficient information shall have the effect of a denial of an allegation.
- (b) Failure to file an answer on a timely basis shall be deemed an admission of all allegations contained in the notice of charges.
- (c) Failure in an answer to deny expressly a charge shall be deemed to be an admission of such charge.

**§ 8.14 Admission or failure to deny charges.**

- (a) The rules of an exchange may provide that if the respondent admits or fails to deny any of the charges the disciplinary committee may find that the rule violation alleged in the notice of charges for which the respondent admitted or failed to deny any of the charges has been committed. If the exchange rules so provide, then:
  - (1) The disciplinary committee shall impose a penalty no greater than the predetermined penalty, if any, stated in the notice of charges for the corresponding violation found to have been committed.
  - (2) If no predetermined penalty was stated, the disciplinary committee shall impose a penalty for each violation found to have been committed.
- (b) The disciplinary committee shall promptly notify the respondent in writing of any penalty to be imposed pursuant to paragraph (a) of this section and shall advise him that he may request a hearing on such penalty within a reasonable period of time, which shall be stated in the notice, but that except for good cause shown no hearing shall be permitted on a penalty imposed pursuant to subparagraph (a)(1) of this section.
- (c) The rules of an exchange may provide that if a respondent fails to request a hearing within the period of

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time stated in the notice he shall be deemed to have accepted the penalty.

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### § 8.15 Denial of charges and right to hearing.

In every instance where the respondent has requested a hearing on a charge which is denied, or on a penalty set by the disciplinary committee under § 8.14(a)(2), he shall be given an opportunity for a hearing in accordance with the requirements of § 8.17. The exchange rules may provide that, except for good cause, the hearing shall be concerned only with those charges denied and/or penalties set by the disciplinary committee under § 8.14(a)(2) for which a hearing has been requested.

### § 8.16 Settlement offers.

(a) The rules of an exchange may permit a respondent to submit a written offer of settlement to the disciplinary committee at any time after the investigation report is completed. The disciplinary committee may accept the offer of settlement, but may not alter its terms unless the respondent agrees.

(b) The rules of an exchange may provide that the disciplinary committee, in its discretion, may permit the respondent to accept a penalty without either admitting or denying the rule violations upon which the penalty is based.

(c) If an offer of settlement is accepted by the disciplinary committee, it shall issue a written decision specifying the rule violations it has reason to believe were committed and any penalty to be imposed. Where applicable, the decision shall also include a statement that the respondent has accepted the penalties imposed without either admitting or denying the rule violations.

(d) The respondent may withdraw his offer of settlement at any time before final acceptance by the disciplinary committee. If an offer is withdrawn after submission, or is rejected by the disciplinary committee, the respondent shall not be deemed to have made any admissions by reason of the offer of settlement and shall not be otherwise

prejudiced by having submitted the offer of settlement.

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[43 FR 41950, Sept. 19, 1978, as amended at 46 FR 63036, Dec. 30, 1981]

### § 8.17 Hearing.

(a) The following minimum requirements shall apply to any hearing required by this subpart:

(1) The hearing shall be fair and shall be conducted before members of the disciplinary committee. The hearing may be conducted before all of the members of the disciplinary committee or a panel thereof, but no member of the disciplinary committee may serve on the committee or panel if he or any person or firm with which he is affiliated has a financial, personal, or other direct interest in the matter under consideration.

(2) The respondent shall be entitled in advance of the hearing to examine all books, documents, or other tangible evidence in the possession or under the control of the exchange which are to be relied upon by the enforcement staff in presenting the charges contained in the notice of charges or which are relevant to those charges.

(3) The hearing shall be promptly convened after reasonable notice to the respondent.

(4) The formal rules of evidence need not apply; nevertheless, the procedures for the hearing may not be so informal as to deny a fair hearing.

(5) The enforcement staff shall be a party to the hearing and shall present its case on those charges and penalties which are the subject of the hearing.

(6) The respondent shall be entitled to appear personally at the hearing.

(7) The respondent shall be entitled to cross-examine any persons appearing as witnesses at the hearing.

(8) The respondent shall be entitled to call witnesses and to present such evidence as may be relevant to the charges.

(9) The exchange shall require persons within its jurisdiction who are called as witnesses to appear at the hearing and to produce evidence. It shall make reasonable efforts to secure the presence of all other persons called